

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 153/2015**

% **18th May, 2017**

SAKIL & ORS. Appellants

Through: Mr. Yogesh Swaroop and
Mr.Gurbachan Singh, Advocate.

versus

UNION OF INDIA (MINISTRY OF RAILWAYS) Respondent

Through: Mr. Joydeep Mazumdar and
Mr.Debojyoti Bhattacharya,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is filed challenging the judgment of the Railway Claims Tribunal dated 15.12.2014 which has dismissed the claim petition filed by the husband and the minor child of the deceased Reshma who is stated to have died on account of an untoward incident on 6.2.2013 along with her four month old daughter Anshfa.

2. The facts of the case as pleaded by the appellants were that the appellants along with the deceased Reshma and the four month old daughter baby Anshfa, on 6.2.2013 after purchasing two adult train

tickets, were travelling by local EMU train from Hazrat Nizamuddin Railway Station at Delhi to New Town Faridabad Railway Station. Whereas the husband/appellant no. 1 along with his two children de-boarded at New Town Faridabad Railway Station, however, it is pleaded that the deceased Reshma along with her four month old daughter Anshfa could not de-board the train on account of heavy rush and they had to travel to the next station at Ballabgarh. It is further pleaded that when the train reached Ballabgarh station the deceased Reshma died on account of an untoward incident of falling from the train which had a sudden jerk. The claim petition was hence filed.

3. Respondent/railways contested the petition and stated that the deceased Reshma along with her four month old daughter Anshfa did not die on account of an untoward incident but died on account of her own criminal negligence of being hit by a train while crossing the tracks and which becomes clear from the statements of the Guard of the train as also of the Station Superintendent. Respondent adduced the evidence of Station Superintendent Akhilesh Kumar as RW-1, Guard of the train Rajesh Kumar as RW-2 and filed the documents Ex.R-1 to R-4 and which were the Inquest Report Ex.A-1, sketch of the site as Ex.R-2, memo issued with respect to the reporting of the incident by an outsider Ex.A-3 and the DRM report Ex.R-4.

4. The Railway Claims Tribunal has dismissed the claim petition holding that the deceased Reshma did not die on account of an untoward incident but died on account of her own criminal negligence as she was hit by a train while crossing the tracks.

5. At the outset, I may note that I am taking that the deceased was a *bona fide* passenger, inasmuch as, over travel up to one station is permitted under para 230 of the Coaching Tariff No. 23 Part I (Vol. I) of the Railways. Though, this para requires purchase of a fresh single journey ticket for the return journey and without necessarily to pay excess fare or penalty, and no train ticket was recovered from the person of the deceased of re-travel from Ballabgarh Railway Station to Faridabad Railway Station, however, considering the fact that Ballabgarh Station is only the next station from Faridabad Station, this Court would like to draw a presumption applying para 230 of the Coaching Tariff of the Railways in favour of the deceased Reshma that she intended to purchase the return ticket, and therefore such intention because of the Coaching Tariff para 230 would translate to the deceased Reshma being a *bona fide* purchaser. However even if the deceased is taken to be a *bona fide* passenger, yet the fact of the matter however is that the deceased has been rightly found by the Railway Claims Tribunal to have been hit by the train

resulting in her death along with her four month old daughter Anshfa and not that the deceased had fallen from the train in question and hence the appellants are not entitled to compensation.

6. The following conclusions, in my opinion rightly, have been arrived at by the Railway Claims Tribunal for holding that the deceased died not on account of falling from the train but on account of being hit by a train while crossing the tracks:-

(i) The body of the deceased Reshma and her four month old daughter Anshfa was found not in the middle portion of the platform or main part of the platform but was found right at the beginning of the platform and which shows that the deceased would be trying to cross the tracks at the beginning of the platform with the baby Anshfa.

(ii) Whereas the body of the four month old daughter Anshfa was found on the platform, and that too eight metres away from the deceased Reshma, the body of the deceased Reshma was found not towards the platform but towards the other up main line and not the loop line on which the EMU train in question had travelled from Faridabad to Ballabhgarh.

7. The relevant paras of the judgment of the Railway Claims Tribunal dealing with these relevant aspect showing the death of the

deceased Reshma and the four month old daughter Anshfa on account of being hit by the train and not on account of falling from the EMU train in question No. 64052 are contained in paras 12 to 17 of the impugned judgment and which read as under:-

“12. AW-1 has admitted in his cross examination that he is not an eye witness to the incident and had de-boarded from the train at New Town Faridabad railway station while the incident occurred at Ballabgarh railway station. The applicants have placed on record the memo of Station Supdt., Ballabgarh issued at 14.30 hours on 6.2.13, Ex.A-3 which records that as reported by an outsider, one woman and one child run over/dashed and killed by any train at km. 1501/37-35 near end of platform no. 5 Delhi end between up loop line and up main line. The death report, Ex.A-4 records injuries sustained due to getting hit by some train and cause of death as train accident. The post mortem reports, Ex.A-15 and Ex.A-15A record cause of death due to train accident. The police station diary, Ex.A-9 records on 7.2.13 that the cause of death was due to injuries caused by train. None of these documents mention any thing about the alleged fall of the deceased from train. It is only in the statements of relatives of the deceased, Ex.A-5 to Ex.A-7, recorded on 7.2.13, i.e. the next day after the incident and Ex.A-8, recorded on 28.2.2013 that cause of death is stated to be due to fall from train. But none of them is an eye witness to the incident. Based on these statements, the enquiry of SHO dated 7.2.13, Ex.A-13 records death due to injuries sustained as a result of fall from train. The police station diary, Ex.A-9 records on 28.2.13 that the death of the deceased was due to fall from train while travelling and due to injuries sustained by train. The final report, Ex.A-14 and the inquest report, Ex.A-1 records death due to train accident. Thus, fall from train in the record of police investigation has been mentioned only on the basis of statements of the relatives who are not an eye witness to the incident and came to know about the death of the deceased only next day.

13. The DRM report, Ex.R-4, on the other hand, after inquiry has concluded that the death of the deceased and her daughter was due to getting hit by some train while unauthorisedly crossing the track. The respondent examined Akhilesh Kumar, Station Supdt. Ballabgarh, RW-1, who had issued the memo, Ex.A-3 which shows that the first report about the incident by an outsider was that one woman and one child was run over/dashed and killed by some train at the end of platform no. 5. RW-1 has filed an affidavit along with rough sketch of the site, Ex.R-2 and has stated in his evidence that at 14:30 hours an outsider informed that the dead body of a female is lying at the end of platform no. 5 and he went to site along with RPF constable Manoj Kumar and saw that a female dead body was lying at km. 1501/37-35 between the up main line and up loop line and a child was also lying dead on Delhi end of platform no. 5. It is stated that train no. 64052 (EMU) from Hazrat Nizamuddin to Palwal arrived at platform no. 5

up loop line at 14.09 hours and departed at 14.10 hours. Thereafter, train no. 14010 Chhindwara Express from Sarai Rohilla arrived and through passed from platform no. 4, up main line at 15.20 hours. He has stated in his cross examination that the dead body of the child was lying about 8 meters away from the dead body of the lady. No passenger of 64052 EMU train informed him about fall of any passenger from that train. He has further stated that 14010 Chhindwara Express train had passed through the station at full speed of about 100 kmph after the EMU train. He had recorded the incident in the untoward incident register and in the station diary of Ballabgarh railway station wherein he has recorded that this incident has occurred due to dashing by some train but no driver has informed about it.

14. In the DCR register of RPF, copy enclosed with the DRM report, on duty RPF official Manoj Kumar has recorded after visiting the site that it appears that the lady was crossing the track with her child in her lap and they were hit by some train and both of them died on the spot. The dead body of the child was lying on platform no. 4 and 5 with deep head injury and the lady was lying before the platform near the location box about 10 ft. Away from the main line with deep head injury and hands and legs broken. Statement of Manoj Kumar of RPF, Ballabgarh is also enclosed with the DRM report corroborating the diary entry.

15. The respondent also examined Rajesh Kumar, Guard of 64052 EMU train from Nazrat Nizamuddin to Palwal on 6.2.13 as RW-2 who has stated that his train reached Ballabgarh railway station at 14.08 hours and the train was received at platform no. 5, which is on up loop line having a speed restriction of 10 kmph. He has stated that neither any untoward incident occurred by his train nor any such incident was brought to his knowledge. He has further stated after seeing the rough sketch, Ex.R-2 that the dead body was lying towards the main line while his train was dealt with on up loop line and that when his train reached Ballabgarh railway station he did not notice any dead body at the station as shown in Ex.R-2."

(underlining added)

8. A reading of the aforesaid paras clearly show that not only there was no report of any passenger falling from the train, but more importantly the rough sketch of the site Ex.R-2 showed that the body of the female deceased i.e. Reshma was found towards the main line and the baby was found lying on the platform towards the loop line, and which means that the deceased Reshma must be trying to cross the tracks of the loop line by coming from the direction of the main line

and the baby therefore fell at the time of being hit by a train towards the platform on the loop line side and the deceased Reshma's body was found towards the main line.

9. In the facts of the present case, admittedly, evidence of no eye witness has been led on behalf of the appellants to show that the deceased died on account of fall from a train so that the incident is an untoward incident in terms of Section 123(c) and Section 124A of the Railways Act, 1989.

10. In view of the above discussion, I do not find any illegality or perversity in the judgment of the Railway Claims Tribunal dismissing the claim petition and holding that the deceased Reshma died not on account of an untoward incident but on account of being hit by a train and which would be because of the deceased Reshma trying to cross the tracks from the main line side and across the loop line and towards the platform where the train was coming on the loop line from Faridabad Station to Ballabhgarh Station.

11. Dismissed.

MAY 18, 2017

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VALMIKI J. MEHTA, J